IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2955 OF 2006

Pfizer Employees Union. ...Petitioner.
Vs.
M/s. Pfizer Limited & Ors. ...Respondents.
....
Mr. C.U. Singh, Senior Advocate with Mr. M. D. Nagle for the Petitioner.
Mr. R. V. Paranjape for the Respondents.
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CORAM : DR.D.Y.CHANDRACHUD, J.

December 11, 2006.

P.C.

The Industrial Court has dismissed a complaint of unfair labour practices under Item 5 of Schedule II and Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

2. Pfizer was engaged in the production of Protinex, a dietary supplement. On 27th November 2002 a communication was addressed on behalf of the Company to its employees in India recording the transfer by Pfizer Products Inc., USA of the trade mark “Protinex” to a Danish food company. Pfizer India, in turn,

had entered into three year “phased sales-transition co-promotion and manufacturing support agreements” with the Danish Company. That led to the institution of the Complaint before the Industrial Court.

3. The defence of the First Respondent to the complaint was that the trade mark “Protinex” was owned by a US based Company, Pfizer Product Inc., while the technology for the manufacture of the product was owned by Pfizer Corporation, Panama. The First Respondent was permitted to use the mark by the U.S. owner of the mark. The technology for the manufacture of Protinex was provided to the First Respondent by the Panamanian Company. On 29th November 2002, the ownership of the trade mark Protinex in India and other countries, was transferred by the U.S. based Pfizer Products Inc. to a Danish Company by the name of East Asiatic Nutrition Limited, Denmark. Similarly, Pfizer Corporation Panama transferred the technology for the manufacture of Protinex to the Danish Company. The First Respondent was licensed to use the mark. On 29th November 2002, the Danish Company terminated the licence agreement of the First Respondent and thereupon entered into an agreement

with the First Respondent for the use of the technology to manufacture the product in question for a period of three years upto November 2005. A licence was also granted to the First Respondent for the use of the trade mark by an agreement. All these aspects were, according to the First Respondent, discussed with the Union.

4. In the course of the cross-examination, the witness who deposed on behalf of the Union (Santosh Pandharinath Sawant, General Secretary of the Union) reflected clearly an awareness of the factual background. The witness stated thus:

> "It is true to say that it is manufactured by Pfizer as a license manufacturer at respondent's Thane plant. It is true to say that the ownership of Protinex is with Prizer Products Inc. USA. The technology to manufacture Protinex is owned by Pfizer Corporation, Panama. ... It is true to say that Pfizer Products Inc. USA sold the ownership of the trademark of Protinex in the year 2002 to another company, East Asiatic Nutrition Ltd. Denmark. It is true to say that Pfizer Corporation, Panama has sold the ownership of technology to manufacture Protinex to East Asiatic Nutrition Ltd. Denmark. It is true to say that East Asiatic Nutrition Ltd. Denmark is a totally different and independent company and is not connected with Pfizer Corporation, Panama or Pfizer Products Inc. USA or respondent company."

5. The Industrial Court adverted to the factual position that

the ownership of the trade mark came to be transferred by the U.S. based Company to the Danish Company while the technology for the manufacture of the product was transferred by the Panamanian Company to the Danish Company. The Industrial Court was of the view that since the First Respondent had a licence to manufacture the product and to use the technology for a period of three years ending November 2005, no unfair labour practice has been established. Following the judgment of the Supreme Court in **Parry & Company Ltd. Vs. P. C. Pal, Judge, Second Industrial Tribunal Calcutta**,[1] the Industrial Court held that a matter relating to the organization or restructuring of business activities fell within the domain of the employer and no unfair labour practice could, therefore, be found. Moreover, the service conditions of the workmen had continued as before. The Court also recorded the statement that the 62 employees who were engaged in manufacturing the product would be redeployed in other areas and Departments. The complaint was accordingly dismissed.

6. On behalf of the Petitioner it has been submitted that the witness who deposed on behalf of the management was unaware

1 AIR 1970 SC 1334

of the facts relating to the underlying transaction and that he admitted that no documents have been filed either to establish the ownership of the mark with the U.S. based Company or the technology for manufacture with the Panamanian Company. Similarly, the witness stated that the licence under which the First Respondent was authorised to use the mark and to use the technology has not been placed on record. Hence, it was urged that the defence to the complaint was not established.

7. The submission that has been urged on behalf of the Petitioner cannot be accepted for more than one reason. First and foremost, the cross-examination of the General Secretary of the Petitioner would clearly establish that the Union was aware of all the material facts and circumstances relating to the case. The General Secretary in para 13 of his cross-examination specifically admitted that the First Respondent was manufacturing the product in question as a licensed manufacturer at the Thane Plant. The witness admitted that the ownership of the mark and of technology for the manufacture of the product was transferred to the Danish Company, East Asiatic Nutrition Ltd., Denmark. That apart, an unfair labour practice under Item 5 of Schedule II or under Items 9

and 10 of Schedule IV cannot be inferred by the mere circumstance that the manufacture of a product which is being carried out by the employer would be discontinued. Under Item 5 of Schedule II an unfair labour practice lies in refusing to bargain collectively and in good faith, with the recognised Union. The material on the record would belie that there was any refusal on the part of the management, in the present case to bargain with the Union. Under Item 9 of Schedule IV the failure to implement an award, settlement or agreement forms the essence of the unfair labour practice on the part of the employer. Under Item 10 it is an unfair labour practice to indulge in an act of force or violence. No force or violence was practiced by the employer. In so far as Item 9 is concerned, the submission is that a notice of change ought to have been given under Section 9A of the Industrial Disputes Act, 1947. Item 10 of Schedule IV to the Industrial Disputes Act, 1947 reads as follows :

> "10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen."

Unless there is a likelihood of retrenchment of workmen, Item 10 of Schedule IV would not be attracted. In the present case, in the

affidavit filed by the management's witness in lieu of the Examination-in-Chief, it has been specifically stated that the workmen who have been engaged in connection with the manufacture of the product Protinex would be redeployed and utilised in other areas at the Thane Plant. As a matter of fact, the manufacture of Protinex has come to an end with effect from 1st September 2006. In para 6 of the affidavit, it has been stated that as on the date of the affidavit, 52 employees who were working in producing Protinex were redeployed in other departments of the Company and the Company absorbed them at its Thane Plant. Finally it has been stated that the Company has never retrenched any workman even though the manufacturing activities at the Thane Plant "remained (a) high cost centre". In these circumstances the Industrial Court has correctly found that there is no change in the conditions of service.

8. The dismissal of the complaint by the Industrial Court was justified. There is no reason to exercise the jurisdiction under Article 226 of the Constitution. The petition is accordingly dismissed.

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